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In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 810

STATE OF WYOMING AND RICHFIELD OIL CORPORATION, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the district court (Pet. App. 1–14) is reported at 195 F. Supp. 692. The opinion of the court of appeals (Pet. App. 15–45) is reported at 310 F. 2d 566.

JURISDICTION

The judgment of the court of appeals was entered on October 12, 1962 (Pet. App. 45). A timely motion for rehearing was denied on November 14, 1962. The petition for a writ of certiorari was filed February 9, 1963. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

The United States granted Wyoming two "school sections" in every township out of public land upon its admission as a State. The surveys on which the original grants were made having been determined to be erroneous and resurveys having been conducted, state officials either elected to retain the original sections or waived the State's right to do so and accepted resurveyed sections. After 50 years of acquiescence in these elections and waivers, may the State now validly assert title to both the original and the resurveyed sections?

STATEMENT

The federal public lands in the Territory of Wyoming were surveyed under standard public land surveying procedures which divided the areas into townships and sections. The original surveys which covered the lands involved here were approved in 1883 and 1884 (R. 104–110). By the Act of July 10, 1890, 26 Stat. 222, Wyoming was admitted as a State, and sections 16 and 36 (or indemnity therefor) in every township were granted to it for the support of common schools.

Subsequently, it was discovered that many of the original surveys were erroneous and that many of the corner markers were obliterated (R. 100, 202). With the great influx of settlers and the arrival of the railroad, the condition of the surveys caused confusion and hardship. As a result, the officials of Wyoming, private settlers, the Union Pacific Railroad Company and federal officials asked Congress for resurveys so that State, private, and federal lands could be con-

clusively located.[1] Congress responded in 1903, 1905 and 1908 with legislation directing resurveys of over 12,000,000 acres.[2] Each of these enactments prohibited impairment of the rights of any actual occupant "to the amount of land to which, under law, he is entitled."

Officials of the United States requested that officials of the State be present during the resurveys to locate on the ground state school lands and other state lands under the original surveys (R. 133, 146–147, 197). By Act of February 15, 1905, Sec. 36–35, Wyo. Stat. 1957, the Wyoming Legislature directed the State Commissioner of Public Lands to "select and locate all lands which are now or may be hereafter granted to the State of Wyoming by the United States for any purpose whatever" (Pet. App. 20). In May 1906, the State Board of School Land Commissioners (of which the Governor was President) authorized the officers of the Board "to waive the right of the State of Wyoming to sections 16 and 36 * * * and accept similar numbered tracts, as resurveyed, * * * when such action is not apparently to the serious disadvantage of the State and that the officers of the Board be authorized to execute such papers as may be required by the United States to carry out this plan" (Pet. App. 20; R. 136).

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[1] H. Rep. No. 2678, 57th Cong., 1st Sess.; S. Rep. No. 4342, 58th Cong., 3d Sess.; H. Rep. No. 1291, 60th Cong., 1st Sess.; 42 Cong. Rec. 7091.

[2] Acts of January 16, 1903, 32 Stat. 767; March 3, 1905, 33 Stat. 992; March 3, 1905, 33 Stat. 1156, 1185; and May 29, 1908, 35 Stat. 465.

Accordingly, throughout the resurveying process, officials of the State actively participated in locating, on the ground the school sections and other state lands under the original surveys. Where the officials elected to take resurveyed sections, they waived, in writing, the State's rights to the original section (R. 31, 33–34, 80, 83, 85–88, 132, 133, 146–147, 150–152). Where the original sections were selected by Wyoming, these were "segregated" as distinct tracts (since, of course, they did not correspond to any sections in the resurveyed townships) and were given tract numbers commencing with the number 37 (R. 100, 133–134, 136, 159–161, 197). The remainder of each township was divided into sections numbered, in the usual manner, from 1 to 36 (R. 100).

Thereafter, the State asserted dominion over the lands which its officials had selected and made no claim to the remainder (R. 111). The United States treated the remainder as federal public lands and patented and [redacted] a large part of them (R. 106–110, 177–183). As late as August 2, 1956, the Attorney General of Wyoming issued an opinion which held that Wyoming did not have title to both areas, and on August 6, 1956, the State Land Commissioner denied applications by Richfield Oil Corporation for five oil and gas leases on lands which had been designated as public lands within sections 16 and 36 as resurveyed (R. 35, 111). However, in May 1957, the same Attorney General reversed his former opinion (R. 35, 111). Wyoming then issued the leases to Richfield (R. 106–110).

Thereupon, the United States instituted this suit for a declaratory judgment defining its rights and titles and those of the State and Richfield in the areas leased by the State to Richfield and in several other test sections. It asked that title be quieted in the State to school sections it had selected fifty years ago under either the original surveys or resurveys, but not both, and that title be quieted in the United States and third parties to those portions of the original or resurveyed school sections not then selected by the State. Alternatively, the United States prayed that, if the State be declared to own the sections which it did not select but now claims, a decree be entered that the United States has title to the areas of the sections previously selected which lie outside of the sections newly claimed and that the State be required to account for all revenues from those areas (R. 1–30).

The district court quieted title to the disputed areas in the United States (Pet. App. 1–14). In addition to construing the laws involved, it relied upon the state and federal administrative acts at the time of the resurveys. With respect to this, the district court restricted itself to evidence of administrative action relating solely to the tracts in issue (Pet. App. 2). The court of appeals affirmed the district court's construction of the laws involved (Pet. App. 15–45). It considered the same evidence of administrative action and, in addition, the substantiation supplied by uncontradicted evidence of a uniform statewide pattern of state and federal administrative action throughout the resurveying program.

ARGUMENT

The decisions of both courts below were plainly correct. There is no conflict with decisions of other courts of appeals or of this Court. Accordingly, there is no warrant for further review.

1. Petitioners' contention (Pet. 6–10) that the decisions below are in conflict with the decision of the United States Court of Appeals for the Ninth Circuit in *United States* v. *Livingston*, 183 F. 2d 192, affirming *United States* v. *Aikins*, 84 F. Supp. 260 (S.D. Cal.), is without foundation. In that case a single township in California was resurveyed by federal authorities to fill an unsurveyed hiatus between it and a neighboring township; as a result school section 36 was moved somewhat southeastwardly. The State had neither requested nor participated in the resurvey; it was not asked to, nor did it, make any elections or waivers in connection with the resurvey. After federal approval of the resurvey, the State sold the portions of the resurveyed section 36 that had not been in the original section 36, without any apparent objection by the United States. Some 35 years later, the United States brought suit to quiet its title to this unduplicated portion of the resurveyed section. The district court concluded, however, that title was in the State's successors in interest, and the court of appeals affirmed *per curiam* on the district court's opinion.

Of the manifold differences between the *Aikins* case and the present one, an obvious and critical one is the factor of state participation in the resurvey. There, the State had nothing to do with either the initiation

or the conduct of the resurvey (see 84 F. Supp. at 263); the State was never asked to make an election, and, as the court there emphasized (84 F. Supp. at 266), it had waived none of its rights to school land. Here, by sharp contrast, the resurvey was authorized by Congress at the request of the State (among others) in order to eliminate confusion in land titles. The State actively participated and cooperated with federal officials in the conduct of the resurvey. And on the basis of formal authorizations by the state legislature and the state Board of Land Commissioners, the State, as to each school land section, either elected to retain the original section or accepted a resurveyed section, waiving its right to the original section in writing. Petitioners have never suggested any reason why those elections and waivers—upon which the State, the federal government and third parties have relied for fifty years—are not still conclusively binding upon the State.[3]

In terms of the equities involved, the *Aikins* decision fully supports the decisions below. There, the court refused to allow the United States to upset titles which were based on a sale by the State to which the United States had not objected and which had remained undisturbed by the United States for 35 years. So here, the courts below declined to permit

[3] Moreover, as the district court indicated (Pet. App. 10–11), the fact that the land in dispute in *Aikins* had been "wild" (*i.e.*, previously unsurveyed) land prior to the "resurvey" might provide some basis for viewing its incorporation into a school section as an additional grant to the State, rather than as an "adjustment" of the original grant.

the State of Wyoming to unsettle a land title arrangement which the State helped establish and in which it has acquiesced for fifty years. The court in the *Akins* case noted the inequity of permitting the United States to quiet title to lands long assumed to belong to the State and its successors (84 F. Supp. at 266). As the court below pointed out, the equities are far stronger here, for to sustain petitioners' contention "would create a chaotic condition with respect to titles" (Pet. App. 41; see also Pet. App. 44–45).

Nor is there any substance to petitioners' argument that the decision of the court of appeals is in error and in conflict with the *Aikins* decision because it relied on general administrative practice, a consideration rejected in *Aikins* (Pet. 9–10). Petitioners do not object to the fact that the district court considered and made findings on the conduct of state and federal officials in carrying out the resurveying program as it related to the particular tracts of land at issue in this case; their complaint is that the court of appeals considered in addition the consistent practice of such officials in the course of the resurvey throughout the State. The court of appeals was plainly entitled to rely on uncontradicted general evidence in the record substantiating the specific findings of the district court; it is always proper on appeal to support a judgment by additional grounds in the record. See, *e.g.*, *United States* v. *American Railway Express Co.*, 265 U.S. 425, 435–436. And the fact that the court in the *Aikins* case chose not to consider "the practice of the Land Office," which it found "has not been con-

sistent" (84 F. Supp. at 266), certainly does not present a conflict between that decision and this one.

2. There is no merit to petitioners' contention that, as a result of the decision below, "the title to many acres of land will remain uncertain until a decision by the Supreme Court" (Pet. 11). Far from unsettling any rights, the decision below confirms titles throughout the State of Wyoming that have been openly and reasonably claimed without challenge for fifty years; only if petitioners' contentions had been sustained would any uncertainties have been introduced into western land titles. Nor is the *Aikins* decision any source of uncertainty. As we have shown, the situation involved in that case is a limited and unique one, and the Bureau of Land Management has taken the position that the *Aikins* holding "will be applied only in those instances which fall squarely within the situation presented in the Livingston [*Aikins*] case" (Wyoming Ex. A, cited at Pet. 11).

3. The decisions below are not in conflict with decisions of this Court, even by analogy as petitioners suggest (Pet. 12–13); on the contrary, the conclusions of the courts below were compelled by applicable rulings of this Court. It is true, as the cases cited by petitioners hold, that as a general rule school sections vest in the State upon the approval of an original survey and that resurveys ordinarily cancel and supersede original surveys. However, this Court has held that, where there has been a resurvey to correct an erroneous original survey and authorized officials of the State participate in an "adjustment" of the grant,

they are deemed to have accepted the adjustment and cannot later "enlarge the scope of the grant" by claiming land under both surveys. *Michigan Land & Lumber Co.* v. *Rust,* 168 U.S. 589, 598–599; see also *United States* v. *Oregon,* 295 U.S. 1, 10–11; *New Mexico* v. *Colorado,* 267 U.S. 30, 41; cf. *Michigan* v. *Jackson L. & S.R. Co.,* 69 Fed. 116, 119, 121–122 (C.A. 6). Those decisions, based on the most elementary equitable principles, plainly govern the present case.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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MARCH 1963.

U.S. GOVERNMENT PRINTING OFFICE 1963